IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8055 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI NATHABHAI BADGA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 8055 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. Heard Mr.Kamlesh Kachchhva, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 9.6.2004 passed by the Commissioner of Police, Ahmedabad City under purported exercise of powers vested with the detaining authority under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a Bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. It transpires that for recording subjective satisfaction, the detaining authority has mainly considered the fact of registration of two criminal offence punishable under Bombay Prohibition Act. The details of both the offences have been mentioned in the grounds for detention conveyed to the petitioner detenu when the order was executed on 9th June, 2004. Both the offences have been registered by Naranpura Police Station punishable under Section 66(1)(b) and 65(e) of the Bombay Prohibition Act. The first offence is of 17th October, 2003 and the second is of 7th May, 2004. No formal statement of any witness has been recorded by the sponsoring authority.

#. The order of detention has been assailed on various grounds mentioned in memo of petition. However, Mr.Kachchhva has focused his argument mainly on two points.

#. The first point pressed into service by Mr.Kachchhva is that there was no sufficient ground or reasons to say that the activity of the petitioner is detrimental to maintenance of public order and therefore, subjective satisfaction recorded by the detaining authority suffers from basic infirmity being a finding not based on cogent material. The time gap between two offences referred to by the authority should be considered as most relevant aspect and there is gap of about more than six months. For the sake of arguments, it is accepted that the petitioner is involved in both these offences, even then, in absence of cogent evidence or material ought not to have been said to be an activity prejudicial to maintenance of public order, but at the most it can be said to be detrimental to maintenance of law and order. On both these occasions, more than one persons were apprehended and arrested and I am told that they were prosecuted for above mentioned offences but the present

petitioner has been placed under preventive detention. It seems that as he is found to have been involved in two offences, he is detained. As such, no other special reasons or circumstances are emerging from the grounds of detention conveyed to the present petitioner.

#. The second ground pressed into service by Mr.Kachchhava is that the order of detention is passed after unreasonable delay. If it was at all necessary to pass the order of preventive detention, even then, the same ought to have been passed at the earliest and the sponsoring authority should have proposed for passing of the detention order immediately after registration of second and last offence referred to by the detaining authority i.e. 7th May, 2004. It is true that even prior to formal arrest in the criminal offence, appropriate proposal to pass the preventive detention order could have been made. If it was not made, then the time gap spent in making proposal can be said to be unreasonable more and if the proposal was under contemplation, then, submitting of the proposal and passing of the order also can be said to be after lapse of reasonable period. The order of detention is of 9th June, 2004, so it was delay by more than one month and for this period, no convincing explanation is coming forth in the reply affidavit. It is true that in para-13 of the reply-affidavit, the detaining authority has attempted to explain the delay caused in passing the order. Though, it is mentioned that after release of the present petitioner-accused on bail in the offence registered on 7th May, 2004, the sponsoring authority has taken some time in collecting necessary materials and information with regard to the anti social activities of the detenu and thereafter the proposal was made on 7th June, 2004. But it is clear that no such material was either supplied to the detenu nor considered by the authority, otherwise, this could have been mentioned specifically in the grounds for detention conveyed to the detenu. So accepting the ratio of the reported decision in case of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC 656, where the Apex Court observed that taking into consideration the unexplained delay in passing of the detention order, in that case, warrants quashing of concerned detention order, the present petition can be allowed.

#. For short, on both these grounds discussed hereinabove, the Court finds that there is some force in the say of Mr.Kachchhava and therefore, it is not necessary to go into detail discussion of other points agitated in the memo of the petition.

#. The petition succeeds and the same is allowed. The order of detention dated 9.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu Rajubhai nathabhai Badga who has been detained at Rajkot District Jail be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :14/12/2004 [C.K.Buch, J.]

#kailash#